

HOUSE BILL REPORT

HB 1858

As Reported by House Committee On: Judiciary

Title: An act relating to the time period for bringing an action for personal injury or death resulting from health care.

Brief Description: Limiting the time period for bringing an action for personal injury or death resulting from health care.

Sponsors: Representatives Lantz, Flannigan, Morrell, Cody, Kirby, Springer, Williams, Miloscia, Schual-Berke, Upthegrove, Linville, O'Brien and Wood.

Brief History:

Committee Activity:

Judiciary: 2/14/05, 2/28/05 [DP].

Brief Summary of Bill

- Provides that a medical malpractice action may not be brought more than eight years after the act or omission resulting in injury, except when the parent of an injured minor knew of the claim and failed to bring an action on behalf of the minor.
- Eliminates the tolling of the statute of limitations during minority for medical malpractice actions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 6 members: Representatives Lantz, Chair; Williams, Vice Chair; Campbell, Kirby, Springer and Wood.

Minority Report: Without recommendation. Signed by 3 members: Representatives Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; and Serben.

Staff: Edie Adams (786-7180).

Background:

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action: (1) the health care provider failed to follow the required standard of care; (2) the health care provider promised

that the injury suffered would not occur; or (3) the injury resulted from health care to which the patient did not consent.

A medical malpractice action must be brought within time limits specified in statute, called the statute of limitations. Generally, a medical malpractice action must be brought within three years of the act or omission or within one year of when the claimant discovered or reasonably should have discovered that the injury was caused by the act or omission, *whichever period is longer*.

The statute of limitations is tolled for minors. This means that the three-year period does not begin to run until the minor reaches the age of 18. An injured minor will therefore always have until at least the age of 21 to bring a medical malpractice action. In addition, the statute is tolled for fraud, intentional concealment, or the presence of a foreign item left in the patient's body. In those cases, the person has one year from actual knowledge of the fraud, concealment, or presence of a foreign item to bring suit. Knowledge of a parent or guardian is imputed to a minor, but the imputed knowledge does not take effect until the minor reaches age 18.

The statute also provides that a medical malpractice action may never be commenced more than eight years after the act or omission. This eight-year outside time limit for bringing an action is called a "statute of repose." In the 1998 Washington Supreme Court decision *DeYoung v. Providence Medical Center*, the eight-year statute of repose was held unconstitutional on equal protection grounds. The Court found that the statute had no rational relationship to a legitimate legislative goal.

Summary of Bill:

The time limits for commencing a medical malpractice action are amended. The current three-year statute of limitations, subject to the one-year discovery rule, is retained. An outside time limit for bringing an action (statute of repose) is provided. A person may not bring a medical malpractice action more than eight years after the alleged act or omission except in the case of an injury to a minor where the parent knew of the claim and failed to bring the action on behalf of the minor. In that circumstance, the action must be commenced no more than three years after the minor reaches the age of 18.

The tolling of the statute of limitations for minors is eliminated with respect to medical malpractice actions. This means that the statute of limitations begins to run on an injured minor at the time of the act or omission that caused the injury, or from the time of discovery that the injury was caused by the act or omission.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The fundamental focus of these bills is protecting access and improving affordability of health care. We've worked for years on compromises, and it is time to work together to move forward and get the job done.

(With concerns) There is no rational basis for the provision of this bill that allows the statute to toll if the parent knows of the claim, but allows it to run when the parent doesn't know. An eight-year statute of limitations for adults could be constitutional, but there are grave reservations about whether a child's right can be deprived before the child has the capacity to bring suit.

Testimony Against: Initiative 330 has a better approach to the statute of limitations. There is a need for certainty and finality, and providers shouldn't have to deal with stale claims. There is a concern about the constitutionality of this bill.

Persons Testifying: (In support) Representative Lantz, prime sponsor.

(With concerns) John Budlong, Washington State Trial Lawyers' Association.

(Opposed) Mark Johnson, Washington State Bar Association; Barbara Shickich, Washington State Hospital Association; and Cliff Webster, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: None.